

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	09/664,459	DENBY ET AL.	
	Examiner	Art Unit	
	Nabil M El-Hady	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 3/26/2004.
2.  The allowed claim(s) is/are 2-7, 10-17, 19, 22-28, 30, and 33, now as 1-24.
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

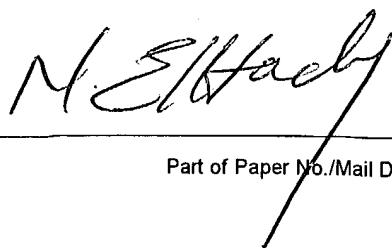
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 9/20/2004.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.



#### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Frank Abramonte, Reg. No. 38,066 on September 20, 2004.

2. The application has been amended as follows:

In the claims:

I. Claim 2 is amended to read as follows:

Claim 2 (Currently Amended): A system for automatically upgrading software on a device, the system comprising:

    a client device having memory for storing software;  
    a server having memory for storing at least one version of a client upgrade software selectively loadable to the client device and executable thereby;  
    a network providing data communication between the server and the client device;  
    a server utility stored on the server and executable thereon, the server utility capable of determining a configuration of the client device and initiating a software upgrade of the client device based on the determined configuration of the client device; and  
    a client utility stored on the client device and executable thereon, the client utility

capable of determining an availability of a specific version of the client upgrade software on the server and initiating a software upgrade of the client device based on the determined availability of the specific version of client upgrade software on the server;

wherein a software upgrade of the client device comprises an installation of a new operating system; and

wherein the installation of the new operating system comprises:

an archive of an application and a set of user data of the client device on the server;

an installation of a new version of the operating system corresponding to the configuration of the client device;

an installation of a new version of the application optimized to the new operating system; and

a restoration of the set of user data.

II. Cancel claim 8.

III. Cancel claim 9.

IV. Claim 12 is amended to read as follows:

Claim 12 (Currently Amended): A method for automatically upgrading software on a client device, the client device having memory for storing software, the method comprising:

storing on a server at least two versions of client upgrade software selectively loadable to the client device and executable thereby;

providing data communication between the client device and the server through a network;

providing a server utility stored on the server and executable thereon, the server utility in a first instance initiating an installation of a first version of client upgrade software on the client device; and

providing a client utility stored on the client device and executable thereon, the client utility is capable of determining an availability of a specific version of client upgrade software on the server, the client utility in a second instance initiating an installation of a second version of client upgrade software on the client device;

wherein an installation of a version of client upgrade software on the client device comprises an installation of a new operating system; and

wherein the installation of the new operating system comprises:

determining a configuration of the client device;

archiving an application and a set of user data of the client device on the server;

providing a version of installation software of the new operating system to the client device corresponding to the configuration of the client device;

rebooting the client device;

installing a version of the archived application optimized to the new operating system on the client device; and

restoring the archived set of user data to the client device.

V. Cancel claim 18.

VI. Cancel claim 20.

VII. Cancel claim 21.

VIII. Claim 23 is amended to read as follows:

Claim 23 (Currently Amended): A method for automatically upgrading software on a client device, the client device having memory for storing software, the method comprising:

    storing on a server a plurality of versions of client upgrade software selectively loadable to the client device and executable thereby;

    providing data communication between the client device and the server through a network;

    providing a server utility stored on the server and executable thereon, the server utility from time to time initiating an installation of a first version of client upgrade software on the client device; and

    providing a client utility stored on the client device and executable thereon, the client utility is capable of determining an availability of a specific version of client upgrade software on the server, the client utility from time to time initiating an installation of a second version of client upgrade software on the client device;

    wherein an installation of a version of client upgrade software on the client device comprises an installation of a new operating system; and

    wherein the installation of the new operating system comprises:

        determining a configuration of the client device;

        archiving an application and a set of user data of the client device on the server;

providing a version of installation software of the new operating system to the client device corresponding to the configuration of the client device;

rebooting the client device;

installing a version of the archived application optimized to the new operating system on the client device; and

restoring the archived set of user data to the client device.

IX. Cancel claim 29.

X. Cancel claim 31.

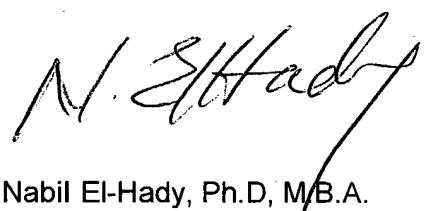
XI. Cancel claim 32.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabil M El-Hady whose telephone number is (703) 308-7990. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 20, 2004

  
Nabil El-Hady, Ph.D, M.B.A.  
Primary Patent Examiner  
Art Unit 2154